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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,483	08/30/2001	Gary E. LeGrow	577-126	8082
25255	7590 08/13/2003			
CLARIANT CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 4000 MONROE ROAD			EXAMINER	
			YU, GINA C	
CHARLOTTE, NC 28205			ART UNIT	PAPER NUMBER
			1617 DATE MAILED: 08/13/2003	7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Sins C. Yu							
Examin T		Application No.	Applicant(s)				
Claim (S. 1-32 Is/are rejected to Samularication appears on the cover sheet with the correspondence address Period for Reply	Office Assistant Community	09/942,483	LEGROW, GARY E.				
The MALIANG DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALIANG DATE OF THIS COMMUNICATION. Editations to the many be peakable used the provisions of 3 CPR 1.138(a). In an event, however, may a neply be limitely filed **Editations** for the map to generalize down by the provision of 3 CPR 1.138(a). In an event, however, may a neply be limitely filed **Editations** for the provision of the provisions of 3 CPR 1.138(a). In an event, however, may a neply be limitely filed **Editations** (or high period show the macrom statute than the statutory period will appear and a limit the statutory minimum of thinty (30) skeys will be considered limity, **If the period for reply seporated shows, the macrom statute than the statutory period will appear and a limit than the statutory period will appear and a limit than the statutory period will appear and a limit than the statutory minimum of thinty (30) skeys will be considered limity, **If the period for reply seporated by the Office label than the replication to become AdMicroBiol (20 U.S.C § 13.3). **Any neply received by the Office label than the replication of the communication, event it introly limit, may receive any some and period than the statutory period will appear and the statutory and the communication. **Status** **Application is FINAL.** **2b)	Office Action Summary	Examin r	Art Unit				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - after SIX (8) MONTHS from the realizing date of his communication. - if the period for reply specified above, the maximum stancing period will apply and will expire SIX (8) MONTHS from the realizing date of his communication. - if the period for reply specified above, the maximum stancing period will apply and will expire SIX (8) MONTHS from the maining date of his communication. - if the period for reply specified above, the maximum stancing period will apply and will expire SIX (8) MONTHS from the maining date of his communication. - if the period for reply specified above, the maximum stancing period will apply and will expire SIX (8) MONTHS from the maining date of his communication. - if the period for reply specified above, the maximum stancing period will apply and will expire SIX (8) MONTHS from the maining date of his communication. - Any reply received by the Order than the new maining date of the schorumulication, even if timely filed, may reduce any search of the communication and the schorumulication will expire six (8) MONTHS from the maining date of his communication. - Any reply received by the Order and the schorumulication of even if timely filed, may reduce any search of the schorumulication will expire six (8) MONTHS from the maining date of his communication. - Any reply received term any reduced timely. - Any reply received term any reduced timely. - Any reply received term any reduced timely. - The schorumulication is possible and the properties of formal matters, prosecution as to the merits is closed in accordance with the practice under Exp parts Quarker, 1935 C.D. 11, 453 O.G. 213. - Disposition of Claim(s)	TI MANUNO DATE AND						
THE MAILING DATE OF THIS COMMUNICATION. Estancians or time may be valide under the provision of 3°C R1.138(a). In no event, however, may a reply be limitly flied after \$IX (8) MONTH'S from the mailing date of his communication. It NO person for mergh is specified able with the mailing date of his communication. If NO person for reply is specified able with the mailing date of his communication. Failure to reply within the statutory prince with the payer and vill early explication to become ABANDONED (3S U.S.C.§ 133). Any reply recomined phila of the size his his new more mailing date of his communication, even if timely flied, may reduce any any reply explication in the second princed patient term adjustment. See 5° CFF.1.746(b). Status 1) Responsive to communication(s) filled on <u>09 May 2003</u> . 2a) This action is FINAL. 2b) This action is FINAL. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-30 is/are pending in the application. 4a) Of the above claim(s) 16-30 is/are withdrawn from consideration. 5) Claim(s) 1-15 is/are rejected. 7) Claim(s) is/are allowed. 6) Claim(s) 1-15 is/are rejected to. 8) Claim(s) 1-15 is/are rejected to solve the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers Application Papers 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. 11) The proposed drawing correction filed on is/are: a) accepted or b) objected to by the Examiner. 12) The earth or declaration is objected to by the Examiner. 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 14) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(e) (to a provisional application). 14) The translation of the foreign language provisional applica		ears on the cover sheet with the c	correspondence address				
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DETAILED ACTION

Election/Restrictions

Claims 16-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The term "PEG" in claims 9-12 is used by the claim to mean "polyoxylethylene," while the accepted meaning is "polyethylene glycol." See Hawley, The Condensed Chemical Dictionary, p. 662.

The term "substantially" in claim 13 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- Claims 1, 4-8, 10, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clariant technology disclosure (The Future of Silicones, Silcare 180 M and 1M) in view of Policello et al. (US 6221922 B1) ("Policello").

Clariant teaches that Silcare 1M71 stearoxytrimethylsilane forms stable clear microemulsions, and suitable for cosmetic formulations by simple mixing without heating, leaving a persistent, silky, non-greasy feeling on the skin. See p. 6. The reference also teaches retinoxytrimethylsilane. See p. 7; instant claim 8. The reference fails to teach using hydrophobic and hydrophilic organosilicone surfactants.

Policello teaches foam control agents for silicone surfactants. The "surfactant matrix" used in the invention comprises Silwet series silicone copolymers, which are hydrophilic, and silicone polyethers, which are hydrophobic. See col. 1, line 55 – col. 2, line 35. A silicone foam control agent is also used. See col. 1, lines 36 – 53. See instant claims 14 and 29. The reference generally teaches that a disadvantage of using alkoxylated organosilicon surfactants is difficulty of controlling foams generated from these products. The reference teaches the use of organosilicon surfactants such as tetra- or trisiloxane alkoxylates are known to reduce the aqueous surface tension of spray solutions. See col. 1, lines 9 – 16. Policello also teaches that silicone polyethers

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are known as an emulsifier or a spreading agent for a defoamer. See col. 1, lines 17 – 29.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the silicone emulsions in Clariant by adding the foaming control agent mixture as motivated by Policello, because of the expectation of successfully reducing the aqueous surface tension and controlling foam.

2. Claims 1-3, 10, 13, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (US 6074470) ("Fisher") in view of Policello.

Fisher teaches a silicone-in-water emulsion composition comprising dispersion of alkoxysilane having particle size of preferably less than 0.5 micrometers. See col. 4, line 9 – col. 5, line 2. The reference teaches the suitable trialkoxysilanes in col. 4, lines 46 – 57. The reference teaches to use an ethoxylated, nonionic primary surfactant having a HLB greater than 13.0; and a nonionic cosurfacatant having HLB of less than 13.0. See col. 6, line 36 – col. 7, line 25 for additional ingredients such as antifoaming agents and foaming agents. See instant claims 14 and 29.

Fisher fails to the organosiloxane surfactants recited in the instant claims.

Policello is discussed above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the silicone emulsion in Fisher by adding the foaming controlling agent mixture as motivated by Policello because of the expectation of successfully producing a sprayable composition with reduced water surface tension and controlled foaming property.

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3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clariant technology disclosure and Policello as applied to claims 1, 4-8, 10, and 14 above, and further in view of Aldous (US 5543136).

Clariant technology disclosure and Policello, discussed above fail to teach the surfactants of instant claim 9.

Aldous teaches a stable sunscreen emulsion comprising cetyl dimethicone copolymer (Abil Em-90 by Goldschmidt). See Example 1. See col. 3, lines 26 – 29.

Given the teaching of the applicability of stearoxytrimethylsilane in sunscreen compositions, one having ordinary skill in the art would have been motivated to look to the prior art such as Aldous for conventional sunscreen formulations which include cetyl dimethicone copolyol in expectation of successfully producing a stable sunscreen composition.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu Patent Examiner August 11, 2003

SREENI PADMANABHAN

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PRIMARY EXAMINER